

Center for **Children's** Advocacy

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TESTIMONY OF THE CENTER FOR CHILDREN'S ADVOCACY TO THE JOINT COMMITTEE ON JUDICIARY IN SUPPORT OF RAISED BILL NO. 6637 AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE AND YOUTH IN CRISIS MATTERS

APRIL 1, 2011

This testimony is submitted on behalf of the Center for Children's Advocacy, a non-profit legal organization affiliated with the University of Connecticut School of Law and dedicated to promoting the legal rights of children who fall through the cracks of the child welfare, education, health and juvenile justice systems.

The Center for Children's Advocacy strongly supports Raised Bill No. 6637, An Act Concerning Determinations Of Competency In Juvenile And Youth In Crisis Matters for the following reasons:

1. In Connecticut, there is no established procedure to be followed when the competence of a child is in question.
2. Many children do not have the mental development needed to be competent to stand trial.
3. Due process concerns have moved the majority of other states to implement similar juvenile competency policies.

Before the age of twenty children are at a disadvantage when it comes to understanding the complexities of an adjudicatory proceeding.¹ Many children do not understand what *Miranda* rights are, nor do they comprehend the intricacies of a trial. Further studies have shown that children have a significantly lower understanding of adjudicatory proceedings than do adults.² About one-third of eleven to thirteen year-olds and one-fifth of fourteen to fifteen year-olds are as impaired as seriously mentally ill adults who would likely be found by court evaluators to be incompetent to stand trial.³ Children of below-average intelligence are more likely than children of average intelligence to be impaired in areas relevant to standing trial.⁴ Considering that



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¹ Studies have shown that the brain begins its final stages of maturation and continues to develop well into an individual's early twenties, stopping around the age of twenty-five. Beatrice Luna, Ph.D., *Brain and Cognitive Processes Underlying Cognitive Control of Behavior in Adolescence*, University of Pittsburgh, Oct. 2005. The prefrontal cortex, which is the part of the part of the brain responsible for reasoning, advanced thought, and impulse control, is the final area of the human brain to mature. Paul Thompson, Ph.D., *Time-Lapse Imaging Tracks Brain Maturation From Ages 5 to 20*, National Institutes of Mental Health, and the University of California Los Angeles, May 2004.

² Thomas Grisso, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, Law and Human Behavior, Vol. 27, No. 4, August 2003.

³ *Id.* at 14.

⁴ *Id.*

many children in the juvenile justice system are of below-average intelligence, it becomes clear that they are more at risk of being incompetent to stand trial than are children in the community.

Therefore, this Bill is crucially needed in order to provide due process protections to this vulnerable group of children. **Section 3(b)** will allow any party, or the court itself, to make a motion for an examination of a child's competency if it seems the child is incompetent. The bill also imposes higher standards for the examiner of the child's competency. **Section 3(d)** would require that the examiner be either a qualified clinical team or, if agreed to by all parties, a physician specializing in psychiatry who has experience in conducting forensic interviewing and in child and adult psychiatry. **Section 3(e)** lays out what the report itself must contain. The report must address whether the child is able to understand the proceedings against the child, whether the child is able to assist in his or her own defense, and whether there is a substantial probability that the child will regain competency within ninety days.

Section 3(f) requires that within ten days of the court's receipt of the examination report, the court must hold a hearing on the issue. This bill gives the court much more flexibility in identifying and providing services to children found to be incompetent and not restorable; the current practice is to commit such children to DCF care. **Section 3(k)(1)** states that if the court determines the child is incompetent and that there is no substantial probability that the child will attain competency within ninety days, the court can dismiss the matter, vest temporary custody of the child or youth in the Commissioner of Children and Families and notify the Chief Child Protection Attorney, or order that DCF conduct an appropriate assessment and propose a service plan that can address the child's needs.

Currently, the majority of other states have effected competency standards for children in juvenile court proceedings.⁵ Eighteen jurisdictions have adopted specific competency standards for children to stand trial in juvenile court, either through statutes or court rules.⁶ They include Arizona, Colorado, Florida, Georgia, Kansas, Minnesota, New York, Texas, and Maryland. Thirteen states have adopted the competency standards found in *Dusky v. United States*.⁷ These include Arkansas, Maine, North Carolina, South Carolina, West Virginia, Delaware, and Illinois.

Florida's statutes provide an enlightening example of another state's juvenile competency laws. **In Florida, the court must stay all proceedings and order a mental evaluation of the child if it has reason to believe the child is incompetent to proceed and either party makes a motion for such an evaluation.**⁸ Similar to what is being proposed in this bill, the court may also move for an evaluation on its own. A child is then found competent to proceed if the child has the ability to consult with counsel with a reasonable degree of rational understanding and the child

⁵ Joseph B. Sanborn, Jr., PhD, *Juveniles' Competency to Stand Trial: Wading Through the Rhetoric and the Evidence*, 99 J. Crim. L. & Criminology 135, 140 (2009).

⁶ *Id.*

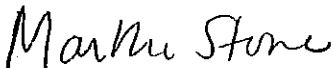
⁷ *Id.*; *Dusky v. United States*, 362 U.S. 402 (1960) (holding that in order to be competent to stand trial, defendants must have a rational and factual understanding of the nature of the proceedings against them, and an ability to consult with a lawyer with a reasonable degree of rational understanding).

⁸ Florida Statutes § 985.19 (1).


has a rational and factual understanding of the proceedings.⁹ The evaluation report must address certain factors related to these two points.

We urge the committee to follow the large number of states that have decided to recognize the special needs of children when it comes to competency to stand trial. Without this bill, many children will be put through the justice system without an understanding of the proceedings or their rights.

Respectfully submitted,



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⁹ Florida Statutes § 985.19 (1)(f).

